UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF OHIO

WESTERN DIVISION

ERIC L. JEFFRIES,

Plaintiff,

vs.

CENTRE LIFE INSURANCE CO., et al.,

Defendants.

CASE NO. C-1-02-351

Deposition of: NEWTON H. BULLARD, M.D.

Pursuant to: Subpoena and Notice

Date and Time: Friday, April 18, 2003 2:40 p.m.

Place: Graydon, Head & Ritchey 511 Walnut Street 1900 Fifth Third Center Cincinnati, Ohio 45202

Reporter: Patti Stachler, RMR, CRR Notary Public - State of Ohio

APPEARANCES OF COUNSEL:

For the plaintiff:

Michael A. Roberts, Esq.
of
Graydon, Head & Ritchey, LLP
1900 Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202
513.621.6464

and

Clifford J. Shoemaker, Esq.
of
Shoemaker & Associates (via telephone)
9711 Meadowlark Road
Vienna, Virginia 22182
703.281.6395

For the defendants:

William R. Ellis, Esq.
of
Wood & Lamping, LLP
600 Vine Street
Suite 2500
Cincinnati, Ohio 45202
513.852.6000

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a witness herein, having been duly sworn, was examined and deposed as follows:

EXAMINATION

BY MR. ROBERTS:

Q. Good afternoon, Dr. Bullard. I can refer to you as Dr. Bullard, Newton, Skip. How would you like for me to refer to you this afternoon?

A. Whichever way is easier for you.

Q. Okay. My name is Mike Roberts. I'm a lawyer at the law firm of Graydon, Head & Ritchey. I represent the plaintiff, Eric Jeffries, in this lawsuit. And you've been asked to perform an examination of Mr. Jeffries and I'd like to go through that with you today.

MR. ROBERTS: First, let's go off the record for a second.

(Off the record.)

BY MR. ROBERTS:

Q. Dr. Bullard, could you kindly share with me your business address?

A. 47 East Hollister Street, Cincinnati, Ohio, 45219.

Q. And what is your profession?

A. I am a physician practicing internal

was?
(The record was read.)
A. I do not believe he has a physical impairment which would prevent him from performing his former occupation.
BY MR. ROBERTS:
Q. Have you discussed the nature of Mr. Jeffries' insurance policy with Mr. Ellis or Mr. Burrell?
A. Only in a general term.
Q. What general term?
A. That he had a disability policy that -- this occurred during the second -- or the meeting that we had, the only meeting that we had, at which time they expressed a desire for me to examine the patient and give them an honest assessment of what the individual's problem was, whether or not he had physical illness or not. And they indicated that there was a disability policy that they were apparently the defenders of or they were representing the insurance company that had the disability policy, but there were -- they weren't particularly specific, and I'm not even sure that that's, in fact, the -- what they are -- what their position is.
My understanding is that your position is in

defense of -- or for Mr. Jeffries and their position is in contrast to that.
Q. Did they share with you any specific provisions of the insurance policy or discuss any provisions of the insurance policy with you?
A. No, they did not.
Q. I don't mean by section number. I mean generally.
A. And I understand that. As they indicated, they wanted, you know, an honest global assessment of the individual's situation.
Q. Okay. Did you have an opinion prior to actually seeing Mr. Jeffries?
A. With respect to his physical condition, yes.
Q. What was your opinion prior to seeing Mr. Jeffries?
A. My opinion prior to seeing him was based on the observations of the 15 or 20 physicians and their records as they detailed their physical exam of the patient. Throughout those records, there appeared to be a number of comments that there were no objective findings in terms of a physical abnormality.
As such, it was my opinion that when I saw the patient it would be unlikely that I would discover

something new.
Q. So what was your opinion before actually seeing Mr. Jeffries?
A. What opinion are you requesting?
Q. Did you have an opinion about Mr. Jeffries' health prior to actually seeing him based on your review of the records and your meeting with Mr. Ellis and Mr. Burrell?
A. My opinion was that I would be unlikely to find a physical abnormality on examining the patient.
Q. Did you have an opinion that he did not suffer from some physical abnormality that made him disabled?
A. No. My opinion was that he had been seen by repeated competent and otherwise physicians and that multiple physical examinations had been performed. My opinion was that my physical examination would be unlikely to find some new finding.
Q. Some objective finding?
A. Correct.
Q. Okay. So is it your testimony that you did not have the opinion prior to seeing Mr. Jeffries that he was not physically disabled from performing his job?
A. No. I reserved the right to make that

comment until I had actually seen the patient.
Q. Was it your judgment that that might be your finding before actually seeing Mr. Jeffries?
A. I would phrase that as my expert opinion based on looking at the other exams.
Q. Okay. What you suspected your findings may be from seeing Mr. Jeffries turned out to be what they were after seeing Mr. Jeffries? Let me ask you a different question.
You reviewed the records and it's your conclusion that -- at least you didn't ascertain from those records any objective evidence of some physical abnormality. Is that accurate?
A. I witnessed a very unusual gait on the part of the patient, which --
Q. I'm not talking about your observations of Mr. Jeffries yet. I want to understand what your opinions were, your judgments were prior to actually seeing him, okay?
Based on simply review of the medical records, do I understand correctly that it was your conclusion that there wasn't any objective evidence of a physical abnormality in the records; is that right?
A. My response to that would be that I hadn't entered the framework of making any conclusion. That

that would be at cross purposes to my role in the case, which was to be a relatively unbiased general examination of the patient. I had formed an opinion but certainly no conclusion.

Q. Okay. That's what I'm getting to. What opinion did you form prior to actually seeing Mr. Jeffries?

A. As I had earlier stated, I formed the opinion that I would be unlikely to find something new physically on my examination of the patient.

Q. Okay. But that's different than what your opinion might be of this patient's abnormality or health. You're expressing opinion about what success you might have in finding something that other doctors didn't. What I want to know is different.

I want to know what opinions you took away from the records you reviewed as a medical doctor. What opinions did you take away from those records, if any? Not whether you had the opinion of whether you'd be successful in uncovering something that others didn't. Do you understand?

A. Uh-huh. I honestly had not formed an opinion as to the issue that you're asking.

Q. Okay.

A. Which was --

Q. So based on your review of the medical records prior to seeing Mr. Jeffries, you did not have an opinion about whether he had a physical disability or not? That was something that you didn't arrive at until actually performing a physical exam?

A. That's correct.

Q. Okay. Did you learn something in the physical exam that leads you to have the opinion that he has no physical disability?

A. Absolutely.

Q. Okay. Could you share that with me?

A. The general examination of a patient is a global integration for a practicing physician of the physical examination, the way the patient speaks, talks, walks, their demeanor. And as such, there are specific physical features; for example, that the patient has an amputation. But the entire individual and how they present and manifest themselves really is what I took away from that examination.

Q. What did you observe, what findings did you make during the actual examination that led you to render an opinion that he has no physical disability that you couldn't glean from your records?

A. I was not able to detect any objective physical impairment on my examination of the patient.

Q. Okay. Is it because you concluded that there's no objective impairment or no evidence of an objective impairment that you conclude that he has no physical disability?

A. I concluded that I could not define a physical disability based on my exam.

Q. Okay.

A. And it was my opinion that he did not then have one.

Q. Okay. Are there any illnesses that are recognized for which there are no objective medical findings a physician such as you can actually make?

A. Yes.

Q. So do I understand that you conclude that Mr. Jeffries doesn't have a physical disability because you couldn't find any objective medical evidence of one, but you would concede that there are some physical disabilities that exist for which there is no objective medical evidence?

A. Given the information that was supplied to me prior to the physical examination, which reviewed countless diagnostic studies, scans and other information, coupled with my physical exam, I felt reasonably comfortable in saying that I felt that if Mr. Jeffries had a problem, that it was not a physical

one.

Q. Okay. What are some illnesses for which there are no objective medical findings that a physician such as you can detect?

A. Virtually every mental illness has no objective physical finding. So the entire gamut of mental illness is without physical abnormality.

Q. Okay. Anything else?

A. There are hundreds of transient illnesses that manifest themselves for which there is no residual, so that an examination will not find or discover that issue.

Q. What do you mean by transient?

A. A syncopal episode, heart stoppage. The patient presents for an evaluation of that. During your exam you can find no evidence of any abnormality, but clearly something happened at some other time.

Q. Are there any chronic ill -- non-mental illnesses for which there is no objective medical evidence?

A. There are a number of illnesses -- not a number -- a fairly small number of illnesses about which there is some contention in the medical literature as to whether or not they exist and, if that is the case, if they do exist, how do we quantify them.

How do you -- do they have a name, are they different manifestations of similar diseases or situations such as that.

Q. What are some of those illnesses?

A. Well, an example might be fibromyalgia.

Q. Okay.

A. However, that disorder has specific subjective physical findings that are supposed to be a manifestation of the diagnosis or of the disease, and as a consequence, the diagnosis can then be entertained.

Q. Anything else?

A. Nothing comes to mind.

Q. What about chronic fatigue syndrome?

A. That may be a similar disorder. They're frequently associated with one another. There are any number of Web sites or focus interest groups that generally link both of those disorders together so that people that have one may frequently have the other. And so there seems to be an association between the two. Or overlap.

Q. What about MS?

A. MS is clearly a medical condition which, although it may have transient findings, has objective abnormalities that can be seen.

Q. Did you discuss whether or not there was objective medical evidence when you spoke to Mr. Burrell and Mr. Ellis? Did you discuss the topic of objective medical evidence and whether it existed or not when you had the discussion with Mr. Burrell and Mr. Ellis?

A. I -- they had provided me with information. I had reviewed the information. It was my opinion in looking at it that the evidence was very tenuous at best.

Q. I don't understand.

A. There are very few tests in medicine that are entirely black or white. The vast majority of studies that are performed on patients have some range of normal. Almost by definition, a blood test will have a normal range and an abnormal range.

I had looked at all of the studies on Mr. Jeffries and really did not feel that there was a consistent pattern of abnormality that suggested a truly abnormal condition.

Q. My question was, did you discuss with Mr. Burrell and Mr. Ellis whether there existed or whether there was an absence of objective medical evidence? Did the topic of objective medical evidence, was it discussed at your meeting with Mr. Ellis and

Mr. Burrell?

A. I discussed the medical evidence with them in the same general way that I responded to your question.

Q. Okay.

A. In other words, I said that I didn't find a pattern throughout the information that I saw that appeared to be consistent. Individual items were never reviewed, discussed or commented.

Q. Did they ask you whether you believed there was any objective medical evidence or whether you believed there wasn't objective medical evidence?

A. No.

Q. Did you suggest to them that you didn't find any objective medical evidence?

A. I suggested to them exactly what I responded to you with, which was that there didn't seem to be a consistent pattern in the evidence that I had been presented.

Q. Okay. So after examining Mr. Jeffries, you rendered the conclusion that, in your judgment, there is no objective medical evidence of a physical disability. You, therefore, conclude if he's disabled, it's because of a mental disorder; is that correct?

A. It was my opinion that in the absence of a

physical disability, if the individual was, in fact, disabled, that it would be then from a mental disorder.

Q. But a physical disability, you told me earlier, can exist even in the absence of objective medical evidence; isn't that right?

A. I believe the question was, are there diseases associated with the absence of objective medical evidence.

Q. Okay. Well, let me ask another question, then, so we're clear. Is it possible to have a physical disability which is not manifest by objective medical evidence?

A. I would like to respond to that in two ways, with two things. One, a physical disability in and of its definition implies, in my mind, something I can measure, look at, you know, assess. And so my response to that would be no.

There are any number of disabling conditions associated with all of the disease processes that we previously mentioned that don't have physically measurable disabilities.

Q. Is that your answer?

A. Yes.

Q. So I understand where you are, it's your

judgment that if there's no objective medical evidence, a person cannot be suffering from a physical disability. If they're suffering at all, it's from a mental disorder?

A. I did not feel in Mr. Jeffries' situation that there was evidence of a physical disability at the time of my examination.

Q. And you get to that conclusion because it's your judgment that there's no objective medical evidence of one?

A. I did not find objective medical evidence in Mr. Jeffries' situation to confirm a disabling physical condition.

Q. Okay.

MR. SHOEMAKER: Mike, this is Cliff. I'm going to have to go to a meeting, but would any of you object if I just asked a few questions before I leave? I'm going to be moving my mission pro hoc vici in the case and while that's not accomplished yet, I can either ask the question and Mike can repeat it or I can just ask it straight, if no one has any objection.

MR. ELLIS: Are you saying you'd like to talk to Mike and give him some questions to ask before you leave?

MR. SHOEMAKER: Well, it would simply be quicker if I just asked the question of the doctor. I only have a few questions. If you have no objection.

MR. ELLIS: Well, I generally do object to double-teaming a witness.

MR. SHOEMAKER: Well, then, let me -- I'll just ask the question of Mike and he can repeat it to the doctor.

Mike, can you ask the doctor whether he feels there is a condition known as myalgic encephalomyelitis or chronic fatigue syndrome?

MR. ROBERTS: Just go ahead and repeat it.

Could you read that question back to the witness?

(The record was read.)

A. There are very large numbers of studies and any number of patients who have been purported to have chronic fatigue syndrome. It is a recognized diagnosis.

MR. SHOEMAKER: Is that a physical diagnosis or a mental diagnosis?

MR. ROBERTS: Bill, do you want her to read it back?

MR. ELLIS: Just go ahead. You're going to

double-team him anyway. Just do it, get it over with.

A. That is a diagnosis based on specific objective physical findings.

EXAMINATION

BY MR. SHOEMAKER:

Q. Are you familiar with the 1994 CVC criteria?

A. I do not have those criteria in front of me.

Q. Have you reviewed this case to see whether or not Mr. Jeffries fits those criteria?

A. I examined Mr. Jeffries in order to perform an examination looking at his global functioning and whether or not I felt that he had a physically disabling condition.

Q. With regard to his condition, the arthralgias, are those caused by a physical, mental, or does he just not have them?

A. Arthralgias are, by definition, a symptom originating from the joint causing joint discomfort. Depending on your definition of the term, there may or may not be associated physical findings.

Q. I'm just talking about Mr. Jeffries' case. Do you think his arthralgias -- he did complain of

arthralgia; is that correct?

A. That is correct.

Q. In your opinion, are his arthralgias mentally caused, are they functional arthralgias?

A. I could find no evidence of objective arthritis on an examination of the patient.

Q. That wasn't my question. Are his arthralgias, in your opinion, related to some mental problem?

A. The patient reported arthralgias. I did not find evidence of arthritis.

Q. I understand. I'm just asking you --

MR. ELLIS: Excuse me. Let him finish his answer.

MR. SHOEMAKER: Sure.

A. I made no opinion as to the source of his subjective complaint.

Q. Okay. So you have no opinion as to whether or not the arthralgias are caused by a physical problem, a mental problem or anything else, or they just could be made up? He's just saying it and he doesn't really have them?

A. The patient reported a subjective symptom for which I could find no objective evidence.

Q. Is the same true of the myalgias?

A. Yes.
Q. Is the same true of any of the pains that he's experienced or the tingling or anesthesia-like numbness?
A. I was unable to document a physical abnormality that coincided with his subjective complaints.
Q. And is the same thing true of the fatigue that he experiences?
A. As there is no objective measure of fatigue that I am aware of, I was unable to measure that or certainly verify its presence.
Q. Did you verify any abnormalities of blood pressure as it's going from lying to standing, things like that, or did you perform any such tests?
A. I don't recall at this time.
Q. Did you perform any test that looked at his brain activity, CAT scan, spec scans, anything of that sort?
A. I was given information from previous studies that had been performed on the patient.
Q. Did you review those films?
A. I reviewed reports on those films.
Q. Did you perform any EMG or nerve conduction velocities?

A. I believe my response to you previously was that I did not verify at the time of my personal physical examination objective findings. I did not order, perform or in any other way obtain additional testing on this patient.
Q. You mentioned in your report wide-based gait. What was the significance of that? Why did you make that notation?
A. It appeared rather peculiar.
Q. Do you have any opinion as to what causes that?
A. There are hundreds of different medical conditions that may be associated with a wide-based gait.
Q. Did you perform an opinion in Mr. Jeffries' case, having reviewed his medical records, as to the cause of his wide-based gait?
A. I could detect no neurologic impairment. I could detect no reason based on my examination of the patient for his peculiar gait.
Q. Did you review the neuropsychological testing?
A. I looked briefly at several of the neuropsychological tests.
Q. Did you form any opinion on the basis of

that?
A. I did not consider myself to be an expert, nor did I consider that I was retained to independently verify or review that information.
Q. How many patients have you treated with chronic fatigue syndrome?
A. In the course of 25 years of medical practice and 200,000 office visits, any number.
Q. Do you have an estimation? Hundreds, thousands, dozens?
A. Dozens.
Q. 20 years, you've seen maybe one or two a year?
A. I would recall for you that the diagnosis was only really entertained in the mid '90s and that the first 12 to 15 years of my practice, patients did not have this as an available resource or diagnosis.
Q. So you're saying prior to the 1990s, there was no such diagnosis?
A. I believe that the diagnosis existed, although there was no systematic or defined criteria set for that. It may have been labeled as other conditions.
Q. Do you have an opinion as to whether or not Mr. Jeffries experienced an adverse reaction to the

hepatitis B vaccination he received?
A. No.
Q. Have you reviewed the reports of various experts -- have you reviewed the report of Dr. Charles Poser?
A. Was Dr. Poser the physician from Canada?
Q. Dr. Hyde. You reviewed Dr. Hyde's materials?
A. I looked briefly at his materials.
Q. Do you consider Dr. Hyde an expert in chronic fatigue syndrome?
A. Dr. Hyde purports to be an expert in chronic fatigue syndrome.
Q. Have you reviewed his textbook?
A. No.
Q. What other experts -- you mentioned other people that had found negative findings or had found that they thought this was due to some mental problem. Who are you referring to there?
A. I don't believe I made those comments. What I said was, that in the examinations that were reported in the data that I reviewed, that no objective findings appeared to be present.
Q. Do you know Dr. McClellan?
A. Very well.

Q. Do you consider him a well-respected doctor in your community?
A. I assisted in his training.
Q. You would consider him a well-respected doctor in this area, your area?
A. Absolutely.
MR. SHOEMAKER: Mike, I'm going to have to take off. I appreciate being allowed to participate, gentlemen.
MR. ROBERTS: Thanks, Cliff. Have a nice weekend.
MR. SHOEMAKER: You have a great day.
MR. ROBERTS: Bye-bye.
FURTHER EXAMINATION
BY MR. ROBERTS:
Q. Have you read Dr. McClellan's reports concerning Mr. Jeffries?
A. No.
Q. Have you spoken to him about Mr. Jeffries?
A. No. Not that -- I don't think so. I mean, I see him periodically in the hospital as part of just in the normal activities that I -- you know, we both go to the same hospital.
Q. But you didn't review his affidavit or his records relating to Mr. Jeffries?

A. No, I have not looked at his affidavit.
MR. ELLIS: I don't know if I've looked at his affidavit. Does he have an affidavit?
Q. Have you reviewed Dr. Poser's report? Dr. Poser is the gentleman at Harvard Medical School.
A. If that was supplied in the information given to me, I have looked at it.
Q. You don't have a memory sitting here today of --
A. I don't have a memory of the various physicians and which report was associated with which person's opinion.
Q. Have you spoken to Dr. Hardings at all relating to Mr. Jeffries?
A. No.
Q. Have you seen any documents or information from him?
A. I saw something today prior to coming here.
Q. You saw his 10 or 15-page report?
A. I just -- I looked at the summary on his report.
Q. But you haven't spoken to him directly regarding Mr. Jeffries?
A. That's correct.
Q. Has Mr. Ellis or Mr. Burrell shared with you

Dr. Hardings' involvement in this case prior to today?
A. No.
Q. Do you know Dr. Luggen?
A. Yes.
Q. What's his opinion -- what's his reputation in the community?
A. Michael is a rheumatologist.
Q. Does he have a -- does he enjoy a good reputation in the community or not?
A. I'm unaware of any -- anything other than glowing recommendations for Dr. Luggen.
Q. How about Dr. Dunn, do you know who he is?
A. I know him very well.
Q. Does he enjoy a good reputation in the community?
A. Yes, he does.
Q. Have you spoken to Dr. Luggen or Dr. Dunn regarding Mr. Jeffries?
A. Absolutely not.
Q. Have you reviewed their records and affidavits concerning Mr. Jeffries?
A. I do not recall that. Let me change that response. I have a recollection of seeing something from Dr. Luggen in the materials supplied to me. I

don't recall anything from Dr. Dunn.
Q. Have you treated any patients that have suffered adverse reactions to vaccines?
A. Yes.
Q. On how many occasions?
A. I cannot respond to that.
Q. What vaccine was it?
A. Influenza.
Q. And how many -- you can't give me an estimate of how many occasions that's occurred in your practice?
A. From the course of the average influenza immunization in my office where 500 injections are given, probably 10 to 15 percent will complain that they got the flu afterwards.
Q. Do you administer hepatitis vaccines in your office?
A. Yes.
Q. Have any of your patients suffered an adverse reaction to hepatitis vaccine?
A. Not to my knowledge.
Q. Have you read any literature that hepatitis does trigger adverse reactions -- the hepatitis vaccine?
A. I believe it is well recognized that that has

occurred.
Q. Do you know what the symptoms are of someone that experiences that condition?
A. I believe that the symptoms vary depending on what the particular adverse condition is.
Q. Do Mr. Jeffries' symptoms contrast the symptoms that occur?
A. The symptoms of an adverse reaction to a vaccine are remarkably similar to any number of ordinary illnesses. The symptoms that I noted in the information that I had been given might have been secondary to the vaccine or an illness which was concurrent.
(Plaintiff's Exhibit 73 was marked for identification.)
Q. Doctor, I'm handing you Exhibit 73. Could you tell me what that is?
A. This is a -- or appears to be a print of the patient's office record from my office.
Q. When did you prepare this?
A. Sometime after the 7th of February.
Q. It wasn't produced to me until mid-March. Is there a reason why it took six weeks to prepare this three-page report?
A. The majority of that was delay on my part.

Q. And then it was six weeks later that you edified those dictated notes?
A. No. The memo notes, the short note would be dictated within 24 hours. The finished report would be dictated when I got around to it.
Q. Okay. Is that original dictated notes -- do those exist somewhere?
A. No. Those would have been dictated over in the process of doing this.
(Plaintiff's Exhibit 74 was marked for identification.)
Q. I've marked as Exhibit 74 another single-page document you produced to me. Could you share with me what that is?
A. That is a -- an additional part of the computerized print of the patient.
Q. What does that mean?
A. The system that we use in the office will print the patient's chief complaint, a diagnosis and medications for inclusion in their records.
Q. Do you have an opinion in this Exhibit 73 as to whether or not Mr. Jeffries suffers from a physical disability or not? Is it in there somewhere?
A. The encounter assessment and plan is really the -- it's not a legal opinion to the extent of that.

As soon as I had completed this, I sent this to Mr. Burrell.
Q. Okay. Do you have any handwritten notes that you worked up this report from?
A. No. Not that I'm aware of.
Q. So you prepared the report from memory several weeks after seeing Mr. Jeffries?
A. No. I might have -- we use a documentation system that uses voice recognition technology and so I probably dictated some notes that then are overdictated at the time the final opinion comes out.
So, in other words, in this document you dictate something and then you go back and enhance it, and as you enhance it, you dictate over what the original was.
Q. So did you dictate notes at or about February 7th?
A. Oh, absolutely.
Q. During the course of the exam were you dictating your notes?
A. No.
Q. Was it after Mr. Jeffries left that day that you dictated your notes?
A. Within -- exams are generally dictated within 24 hours.

And what I indicated was that additional neurodiagnostic testing is probably warranted based on the peculiar nature of his symptoms.
Q. You don't have the expertise to render an opinion that Mr. Jeffries suffers from a mental disorder, do you?
A. I have never professed that I did.
Q. Okay. So you can't offer up that opinion that he suffers from a medical -- or a mental disorder?
A. That is correct.
Q. Okay. So I understand correctly, the basis for your opinion that Mr. Jeffries doesn't have a physical disability is your conclusion that there's no objective medical evidence of one?
A. Based on my examination of the patient, review of the information provided to me, it was my opinion that I could not find an objective physical disabling condition.
Q. Okay. You produced a pretty good volume of records for me.
A. Sorry.
Q. That's okay. By the way, do you have documentation of your invoice to the Ellis-Burrell firm?